

April 2, 1996

OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON

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Seattle, Washington 98104  
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DECISION ON APPEAL OF CONDITIONS OF SHORT PLAT APPROVAL

SUBJECT: Department of Development and Environmental Services File Nos. L95S0015 and L9600021

WAYNE E. JOYCE  
Short Plat Appeal

Property generally located on the north side of 43rd Street and east of 164th Avenue S.E.

SUMMARY OF RECOMMENDATIONS:

Division's Preliminary:	Deny
Division's Final:	Deny
Examiner:	Deny

PRELIMINARY REPORT:

The Land Use Services Division's Preliminary Report on Item Nos. L95S0015 and L9600021 was received by the Examiner on March 4, 1996.

PUBLIC HEARING:

After reviewing the Land Use Services Division's Report and examining available information on file with the appeal, the Examiner conducted a public hearing on the subject as follows:

The hearing on the short plat appeal of Wayne Joyce was opened by the Examiner at 1:35 p.m., March 18, 1996, in Room No. 2, Department of Development and Environmental Services, 3600 - 136th Place S.E., Bellevue, Washington, and adjourned at 2:30 p.m. Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the Office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. General Information:

Applicant:	Wayne E. Joyce 16729 SE Newport Way Issaquah, WA 98027
Appellant:	Wayne Joyce
Agent:	George Xenos Property Development Association 3000 NE 100th Street Seattle, WA 98125
STR:	NW 13-24-5
Location:	Generally located on the north side of 43rd Street, approximately 1000 feet east of 164th Avenue Southeast
Zoning:	R-4
Acreage:	1.54

Number of Lots: 3  
Proposed Use: Residential  
Sewage Disposal: Public  
Water Supply: Public

2. On December 29, 1995 the King County Land Use Services Division issued preliminary approval of the subject short subdivision. The preliminary approval is subject to conditions, including several based upon a determination by King County that a class 3 stream flows intermittently across the property. This stream enters the property at a culvert on the south property line and flows northeasterly to a point approximately 50 feet south of the northeast corner of proposed lot 2.

On January 8, 1996 the applicant appealed the conditions related to the stream determination, and also appealed a condition imposed pursuant to the King County fire code. The appeal of the condition based upon the fire code was previously dismissed as outside the jurisdiction of the Hearing Examiner.

3. On January 15, 1996 the applicant submitted its appeal statement, asserting that the area of the stream is not a class 3 stream, as it does not meet the King County criteria for that determination except for a small segment near the east boundary of the property.
4. The King County sensitive areas code defines "streams" as,

"Those areas. . .where surface waters produce a defined channel or bed, not including irrigation ditches, canals, storm or surface runoff devices, or other entirely artificial watercourses, unless they are used by salmonids or are used to convey streams naturally occurring prior to construction in such watercourses. For the purpose of this definition, a defined channel or bed is an area which demonstrates clear evidence of the passage of water and includes, but is not limited to, bedrock channels, gravel beds, sand and silt beds, and defined-channel swales. The channel or bed need not contain water year-round. . .

C. Class 3 streams, only including streams which are intermittent or ephemeral during years of normal rainfall and which are not used by salmonids." KCC 21A.06.1240

5. The evidence shows indisputably that during years of normal rainfall water flows from the mouth of the culvert on the south property line to the east property line within a natural ravine. Although the ravine probably was not incised by the flow of water, the surface waters have produced a defined channel and stream bed within this natural feature.
6. Upland development, including residential development and the construction of Southeast 43rd Street in 1967, has increased the volume and duration of flows through this channel during the last thirty years. However, the source of water entering a defined channel is not relevant to the determination whether a stream presently exists.

#### CONCLUSIONS:

The King County Land Use Services Division correctly determined that a class 3 stream exists on the subject property. The conditions appealed were properly applied pursuant to the requirements of the King County sensitive areas code to reflect the presence of the class 3 stream.

#### DECISION:

The appeal by the applicant of the conditions of short plat approval is DENIED.

ORDERED this 2nd day of April, 1996.

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James N. O'Connor  
King County Hearing Examiner

TRANSMITTED this 2nd day of April, 1996, to the following parties and interested persons:

Ethel M. Barton  
16705 SE 43rd Street  
Issaquah, WA 98027-7841

Howard & Ruth Schaible  
165 Dog Leg Lane  
Port Ludlow, WA 98365

Shupe Holmberg  
Baima & Holmberg  
100 Front Street South  
Issaquah, WA 98027

P. Mitchell/Craig Spielman  
16728 SE 43rd Street  
Issaquah, WA 98027

Norlin Joyce  
16108 SE 45th Street  
Issaquah, WA 98027

Thomas R. Strong  
Terra & Associates  
12525 Willows Rd. #101  
Kirkland, WA 98034

Wayne E. Joyce  
16729 SE Newport Way  
Issaquah, WA 98027

George J. Xenos  
Property Development Assoc.  
3000 NE 100th Street  
Seattle, WA 98125

Lisa Pringle, Dave Baugh, and Fereshteh Dehkordi - DDES/LUSD, Site Plan Review  
Jeffrey L. Bunnell, Curt Foster, and Joe Miles - DDES/LUSD, Engineering Review  
Doug Hennick, DDES, Site Development Services

NOTICE OF RIGHT TO APPEAL  
AND ADDITIONAL ACTION REQUIRED

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding short plat appeals. The Examiner's decision shall be final and conclusive unless a person with standing commences a proceeding for review pursuant to the Land Use Petition Act by filing a petition in the Superior Court for King County and serving all necessary parties within twenty-one (21) days of the issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE MARCH 18, 1996, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT  
AND ENVIRONMENTAL SERVICES FILE NO. L95S0015 AND L9600021 - WAYNE E. JOYCE  
SHORT PLAT:

James N. O'Connor was the Hearing Examiner in this matter. Participating in the hearing were Norlin Joyce, Wayne E. Joyce, Thomas Strong, George Xenos, Doug Hennick/DDES/LUSD/Site Development Services, and Fereshteh Dehkordi/DDES/LUSD/Site Plan Review.

The following exhibits were offered and entered into the hearing record:

Exhibit No. 1	Department of Development and Environmental Services file No. L95S0015
Exhibit No. 2	Department of Development and Environmental Services Preliminary report dated March 18, 1996
Exhibit No. 3	Application dated March 10, 1995
Exhibit No. 4	Revised site plan received October 18, 1995
Exhibit No. 5	Assessor's map 13-24-5
Exhibit No. 6	Preliminary approval report dated December 29, 1995
Exhibit No. 7	Appeal letter, dated January 8, 1996
Exhibit No. 8	Statement of appeal, dated January 15, 1996
Exhibit No. 9	Stream evaluation report dated January 8, 1996, by Terra Associates, Inc.
Exhibit No. 10	Stream evaluation report dated September 19, 1995 by Terra Associates, Inc.
Exhibit No. 11	Stream review report, by Doug Hennick of DDES, dated November 11, 1995
Exhibit No. 12	Stream review report and pictures, by Doug Hennick of DDES, dated February 2, 1996
Exhibit No. 13	Assessor's map annotated by appellant
Exhibit No. 14	Construction drawings (2 pages)
Exhibit No. 15	Drawing of catch basin and culvert at 43rd Street

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Exhibit No. 16 City of Bellevue aerial map

Exhibit No. 17 Level 1 drainage analysis by Baima & Holmberg, dated November 8, 1994

JNOC:var/cp

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